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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,085	10/20/2003	Lee S. Weinblatt	5264-44	4859

7590 09/25/2006  
COHEN, PONTANI, LIEBERMAN & PAVANE  
Suite 1210  
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New York, NY 10176

EXAMINER

CHU, MICHAEL

ART UNIT	PAPER NUMBER
2618	

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/690,085	<b>Applicant(s)</b> WEINBLATT ET AL.	
	<b>Examiner</b> Michael Chu	<b>Art Unit</b> 2618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2003.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Birnbach et al. (US Patent# 6,819,247) in view of West et al. (US Patent# 6,842,433).

Consider Claims 1 and 2. Birnbach et al. teaches an apparatus for monitoring an audience member (Col. 3, lines 35-43, Col. 6, lines 32-44, Col. 2, lines 47-49, Abstract, lines 1-17, See Part 10 of Figure 3), comprising:

a portable audience monitoring unit adapted to be worn by the audience member (Col. 3, lines 35-43, Col. 6, lines 32-44, Col. 2, lines 47-49, Abstract, lines 1-17, See Part 10 of Figure 3), and including:

(a) means for detecting a signal (Col. 8, lines 34-54, particularly lines 45-47, Abstract, lines 1-17, particularly lines 5-6, Col. 10, lines 29-38 & lines 46-64), and

(b) means for storing the detected signal (Col. 14, lines 43-60, particularly lines 54-60, Col. 17, lines 4-5);

means for outputting the detected signal stored in said audience monitoring unit (Col. 5, lines 1-4, Col. 6, lines 53-56, Col. 13, lines 29-32, Col. 17, lines 14-16); and

communication means for transmitting the outputted detected signal to a central processing station, wherein said communication means communicates with Cellular Digital Packet Data (CDPD) (Col. 5, lines 1-4, lines 24-43, particularly lines 33-43).

Although Birnbach et al. teaches the apparatus for monitoring an audience member (Col. 3, lines 35-43, Col. 6, lines 32-44, Col. 2, lines 47-49, Abstract, lines 1-17, See Part 10 of Figure 3), Birnbach et al. does not specifically teach the a member tuned to a broadcast program and detecting a signal corresponding to the broadcast program to which the audience member is tuned. However, in related art, West et al. teaches a transceiver system that broadcasts information (signal) on demand to a portable computing device (Col. 11, lines 1-5, Col. 1, lines 20-23, Col. 2, lines 52-57, lines 63-65, Col. 3, lines 1-29, Col. 6, lines 40-47, lines 61-65), where a receiver is tuned to a particular frequency range or a wavelength (Col. 19, lines 1-16, Col. 58, lines 36-51). Therefore, it would have been obvious at the time of the invention to combine the teachings of Birnbach et al. and West et al. in order to increase the wireless communication range of portable devices.

Consider Claims 3 and 4. Birnbach et al. teaches an apparatus for monitoring an audience member (Col. 3, lines 35-43, Col. 6, lines 32-44, Col. 2, lines 47-49, Abstract, lines 1-17, See Part 10 of Figure 3), comprising:

a portable audience monitoring unit adapted to be worn by the audience member (Col. 3, lines 35-43, Col. 6, lines 32-44, Col. 2, lines 47-49, Abstract, lines 1-17, See Part 10 of Figure 3), and including:

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(a) means for detecting a signal (Col. 8, lines 34-54, particularly lines 45-47, Abstract, lines 1-17, particularly lines 5-6, Col. 10, lines 29-38 & lines 46-64), and

(b) means for storing the detected signal (Col. 14, lines 43-60, particularly lines 54-60, Col. 17, lines 4-5);

means for outputting the detected signal stored in said audience monitoring unit (Col. 5, lines 1-4, Col. 6, lines 53-56, Col. 13, lines 29-32, Col. 17, lines 14-16); and

communication means for transmitting the outputted detected signal to a central processing station, wherein said communication means communicates with a ReFLEX protocol (Col. 5, lines 1-4, lines 24-43, particularly lines 31-33)..

Although Birnbach et al. teaches the apparatus for monitoring an audience member (Col. 3, lines 35-43, Col. 6, lines 32-44, Col. 2, lines 47-49, Abstract, lines 1-17, See Part 10 of Figure 3), Birnbach et al. does not specifically teach the a member tuned to a broadcast program and detecting a signal corresponding to the broadcast program to which the audience member is tuned. However, in related art, West et al. teaches a transceiver system that broadcasts information (signal) on demand to a portable computing device (Col. 11, lines 1-5, Col. 1, lines 20-23, Col. 2, lines 52-57, lines 63-65, Col. 3, lines 1-29, Col. 6, lines 40-47, lines 61-65), where a receiver is tuned to a particular frequency range or a wavelength (Col. 19, lines 1-16, Col. 58, lines 36-51). Therefore, it would have been obvious at the time of the invention to combine the

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teachings of Birnbach et al. and West et al. in order to increase the wireless communication range of portable devices.

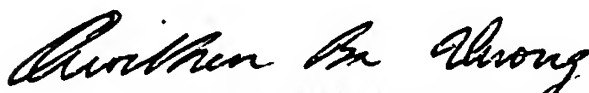
### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Chu whose telephone number is 571-272-7875. The examiner can normally be reached on Monday-Friday (8:30am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay Maung can be reached on 571-272-7882. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

 9/15/06  
QUOCHIEN B. VUONG  
PRIMARY EXAMINER

Michael Chu